

UDAF Recommended Changes for Industrial Hemp Program and 4-41

Statutory Changes:

A. Definitions -

- a. Add: "Acceptable hemp THC level" means total THC concentration of not more than 0.3 % on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the total THC concentration of 0.3 %.
 - i. Reason- Added to be compliant with USDA rules in order to have an approved state hemp production plan.
- b. Change: Cannabinoid Product to include cannabinoids from all naturally occurring biomass; Remove medicinal when referencing dosage forms; and add delta-8 THC level requirements
 - i. Reason - cannabinoids don't just come from hemp and cannabis. For example: there have been requests to register products that have cannabinoids from oranges.
 - ii. Reason - asking to allow products to be registered beyond the 8 currently listed forms. There are many similar forms being produced that don't exactly meet the criteria listed in statute.
 - iii. The introduction of delta 8 THC, a less psychoactive form of THC, into the market, we believe calls for regulations on the manufacturing and sale of those products because it is psychoactive and derived through psychoactive processes. Products with delta-8 at high levels should be placed in the medical cannabis market, but those under 0.3% should be allowed into the CBD market.
- c. Add: Delta - 8 THC
 - i. Reason – Delta-8-THC is defined as a federally controlled substance, but because it will be allowed in both hemp and medical cannabis programs at certain levels it should be exactly defined.
- d. Add: "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert one cannabinoid into another.
 - i. Reason - Delta 8 THC is an example where, although naturally occurring in cannabis at smaller levels, it is now being derived from CBD using chemical changes to be produced in higher concentrates for products.
- e. Add: "key participant" "means any person who has a financial interest in the business entity including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation. A key participant also includes persons at executive levels including chief executive officer, chief operating officer, or chief financial officer. Key participants are also operation managers and site managers, or any employee who may present risk of diversion.

- i. Reason - USDA's U.S. Domestic Hemp Production rules require background checks on all key participants, in order for Utah have an approved state hemp plan, we will also need key participants to have background checks, this addition spells out who those participants are.
- f. Remove/Change: Medicinal Dosage Form
 - i. Reason -to allow products to be registered beyond the 8 currently listed forms. There are many similar forms being produced that don't exactly meet the criteria listed in statute. The industry is still maturing and developing products. At this time, we spend a majority of our product registration time declining applications because the product does not meet the criteria listed in statute. We feel that opening the forms up will allow the program to better protect the consumer, rather than to push unregistered product into the market.
- g. Change: non-compliant material to include delta-8-THC acceptable limit of 0.3%
 - i. Reason - Delta-8 is a federally controlled substance, but because it will be allowed in both hemp and medical cannabis programs at certain levels it should be exactly defined and allowed into the CBD market if under 0.3%.
- h. Add: "Synthetic cannabinoid" means any cannabinoid that was chemically synthesized from starting materials other than a naturally occurring cannabinoid.
 - i. Reason - The goal is to distinguish between derived cannabinoids and synthetic cannabinoids for the benefit of producers. That way producers don't have to use the word "synthetic" on their label if the product was made from a naturally occurring cannabinoid that was modified. This is probably more important on the medical cannabis side of things, it will only become an issue for hemp if delta-8-THC, or some other non-natural cannabinoid, is allowed to be added to hemp products.
- i. Add: "Total Cannabidiol" or "Total CBD" means the combined amounts of cannabidiol (CBD, CAS# 3556-78-3) and cannabidiolic acid (CBDA, CAS# 1244-58-2) calculated as $[CBD] + ([CBDA] \times 0.877)$.
 - i. Reason - for reporting purposes, mostly on product analysis that shows the true potential amounts of cannabidiol.
- j. Add: "Total tetrahydrocannabinol" or "Total THC" means the sum of the determined amounts of delta-9-THC and THCA, according to the formula: $Total\ THC = \delta\text{-}9\text{-THC} + (THCA \times 0.877)$.
 - i. Reason - for reporting purposes, mostly on certificates of analysis that show the true potential amounts of delta-9-THC in product or plants. Will clearly designate what Utah is regulating on when testing for THC.

B. 4-41-103.3 - Industrial Hemp background checks

- a. Add wording to allow for Industrial Hemp Producers to have background checks done using the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service.

- i. Reason - Utah Code and USDA Rules require that background checks are performed on applicants and key personnel of hemp producers. During 2020, which was our second growing season, applicants experienced problems, delays, and misunderstanding of background check requirements making it difficult to get their license in a timely manner. Giving an ability to have them get fingerprinted one time and us having access to the background check on an ongoing basis will resolve the issues.

C. 4-41-103.4 Industrial hemp laboratory permit.

- a. Add that labs must be able to test for delta-8 THC concentration levels
 - i. Reason – Delta-8-THC has become a common cannabinoid seen in CBD type products. Because of the possible psychoactive effects, it is necessary to regulate the concentration levels and have products placed into the correct markets. Therefore, labs that will be doing regulatory testing will need to be able to test for Delta-8-THC concentrations.

D. 4-41-105 Unlawful Acts

- a. Add: It is unlawful for any person to distribute, sell, or market a product that contains greater than 0.3% of either total THC or delta-8-THC under this chapter.
 - i. Reason - DEA, USDA, and Utah code all define hemp as having 0.3% or less of THC. Processing hemp for CBD will always cause a concentration level of THC much higher than 0.3%. This is usually looked at as waste or byproduct in the CBD market. Utah allows for the use of the hot oil to be sold into the medical cannabis market. Because of this, there is a concern that hot oil may come into Utah from other states. We want to make sure that we are not seen as an accessory to trafficking marijuana.
- b. Add: It is unlawful for any person to sell a cannabinoid identified by the department as psychoactive under this chapter.
 - i. Reason - recent additions of other THC such as delta-8 into the market and the realization that there are several other possibilities of THC products that could show up in the market, along with the state's decision to maintain a separation between medical cannabis (over 0.3% THC) and hemp (under 0.3% THC) the department believes we should be ready if and when other forms of THC show up.
- c. Add: It is unlawful for any person to transport extracted material or final product that exceeds the acceptable hemp THC level outside the State of Utah.
 - i. Reason - DEA, USDA, and Utah code all define hemp as having 0.3% or less of THC. Utah wants to maintain a separation between medical cannabis (over 0.3% THC) and hemp (under 0.3% THC). There is a

concern that black market and gray market products may be sent into the state from other states.

E. 4-401-204 Department to make rules regarding cultivation and processing.

- a. Remove: Medicinal form (2) leaving only dosage form rather than medicinal dosage form.
 - i. Reason - to allow products to be registered beyond the 8 currently listed forms. There are many similar forms being produced that don't exactly meet the criteria listed in statute. The industry is still maturing and developing products. At this time, we spend a majority of our product registration time declining applications because the product does not meet the criteria listed in statute. We feel that opening the forms up will allow the program to better protect the consumer, rather than to push unregistered product into the market.

F. 4-41-402 Cannabinoid sales and use authorized.

- a. Add: (4) A person may not produce, sell, or use a cannabinoid product that is:
 - (a) added to a conventional food or alcoholic beverage;
 - (b) marketed or manufactured to be enticing to children; or
 - (c) smokable flower.
- i. Reason - in order to allow registration of more products and increase compliance with Utah statute and rules. Putting some restrictions on final hemp products that are a concern, but opening the market up to products that are common in the industry and that state leaders deem as safe. This will allow for more compliance as well as give the program an ability to better confirm consumer safety of the products.

Budget requests for FY 2022:

Through the building block process, UDAF is asking for equipment and vehicles to outfit two inspectors to help inspect retail outlets and product registration compliance.